

ALJ/TIM/avs

Decision 02-03-025 March 6, 2002

**BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA**

In the Matter of the Expedited Application of Pacific Gas and Electric Company (U 39 M) to (1) Issue, Sell and Deliver One or More Series of Its First and Refunding Mortgage Bonds, Debentures, Subordinated Deferrable Interest Debentures, Promissory Notes and/or Other Evidences of Indebtedness in Connection with Domestic or Euro-Market offerings, to Guarantee the Obligations of Others in Respect of the Issuance of Securities and to Arrange For Standby Letters of Credit as Performance Guarantees, the Total Aggregate Principal Amount of Such Issuances and Guarantees Not to Exceed \$2 Billion; (2) Enter into One or More Interest Rate Caps, Collars and Swaps; (3) Issue Variable Rate Debt (Including Fixed Rate Debt Swapped to a Variable Rate) to Finance Balancing Account Undercollections; and (4) Obtain an Exemption from the Competitive Bidding Rule.

Application 00-10-029  
(Filed October 18, 2000)

**OPINION REGARDING THE PETITION TO MODIFY  
DECISION (D.) 01-06-074, D.01-02-050, AND D.01-01-062  
FILED BY PACIFIC GAS AND ELECTRIC COMPANY**

**Summary**

This decision extends Pacific Gas and Electric Company's (PG&E's) authority to pledge its gas customer accounts receivable ("accounts receivable") and core gas inventory ("core inventory") for the purpose of procuring core gas supplies until the earlier of (i) May 1, 2003, (ii) 15 days after an upgrade of the

credit rating of PG&E's senior unsecured long-term debt to at least BBB- by Standard & Poor's (S&P) or Baa3 by Moody's Investor Services, Inc. (Moody's), (iii) the effective date of a Chapter 11 Plan for PG&E, or (iv) the dismissal or conversion of PG&E's Chapter 11 case.

## **Background**

In D.01-01-062, the Commission granted PG&E authority under Pub. Util. Code § 851<sup>1</sup> to pledge its accounts receivable and core inventory<sup>2</sup> for the sole purpose of procuring core gas supplies. The authority granted by D.01-01-062 terminated the earlier of (i) 90 days after the effective date of the decision, or (ii) 15 days after an upgrade of the credit rating of PG&E's senior unsecured long-term debt to at least BBB- by S&P or Baa3 by Moody's. In D.01-02-050, the Commission extended PG&E's authority to pledge its accounts receivable and core inventory until July 31, 2001. In D.01-06-074, the Commission extended PG&E's authority until the earlier of (i) May 1, 2002, (ii) the effective date of a confirmed reorganization plan in PG&E's bankruptcy case, (iii) the closure or dismissal of PG&E's bankruptcy case, or (iv) 15 days after an upgrade of the credit rating of PG&E's senior unsecured long-term debt. The Commission issued these decisions in response to the precipitous decline in PG&E's financial condition, which culminated in PG&E filing for bankruptcy.

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<sup>1</sup> All statutory references are to the Public Utilities Code unless otherwise indicated.

<sup>2</sup> For purposes of this decision, "core inventory" is defined as gas designated for core customers that is held in storage fields and pipelines.

On December 11, 2001, PG&E filed a petition to modify D.01-01-062, D.01-02-050, and D.01-06-074 (Petition).<sup>3</sup> In its Petition, PG&E asks the Commission to extend PG&E's authority to pledge its accounts receivable and core inventory from May 1, 2002, to the earlier of (i) May 1, 2004, or (ii) 15 days after an upgrade of the credit rating of PG&E's senior unsecured long-term debt. PG&E does not seek to have its authority tied to events in its bankruptcy case.

PG&E states that it needs an extension of its authority in order to preserve its ability to procure adequate supplies of gas to meet the needs of its customers. PG&E intimates that as long as it is in bankruptcy, many gas suppliers will not sell gas to PG&E without a security interest in PG&E's accounts receivables.<sup>4</sup> PG&E also represents that gas suppliers' concerns about PG&E's credit quality have been heightened by recent events surrounding Enron.

On February 27, 2002, PG&E filed an amendment to its Petition. In its amendment, PG&E acknowledges that the Commission has established regulatory mechanisms that enable PG&E to pay for gas purchases on a timely basis. PG&E also states that its status as a debtor in possession under federal bankruptcy law should not impede its ability to pay for future gas supplies. PG&E represents that although it has informed gas suppliers that it can and will

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<sup>3</sup> Although PG&E refers to its pleading as a petition to modify D.01-01-062, D.01-02-050, and D.01-06-074, there is nothing in the Petition that indicates it is necessary to modify either D.01-01-062 or D.01-02-050. For example, PG&E proposed specific changes to the wording of D.01-06-074 as required by Rule 47(c), but PG&E did not propose any specific changes to D.01-01-062 or D.01-02-050.

<sup>4</sup> PG&E states that the bankruptcy court has authorized PG&E's continued use of gas accounts receivables to secure core gas purchases. The bankruptcy court's jurisdiction does not affect § 851, which requires PG&E to obtain authority from the Commission prior to encumbering its gas accounts receivable.

pay for future gas purchases, suppliers continue to demand that PG&E provide assurance that it will pay for future gas purchases.

PG&E included in its amendment a sworn declaration from the Portfolio Manager of PG&E's Gas Procurement Department (Manager). The Manager states that some gas suppliers refuse to sell to PG&E because of PG&E's perceived lack of creditworthiness. Of the remaining suppliers willing to sell gas to PG&E, most demand prepayment or some other form of credit assurance. Consequently, the Manager believes that PG&E's ability to obtain adequate supplies of core gas would be threatened if the Commission fails to extend PG&E's authority to pledge its gas accounts receivable.

PG&E also submitted a sworn declaration from a Senior Financial Analyst in PG&E's Credit Risk Management Unit (Analyst). The Analyst represents that because of PG&E's low credit rating, gas suppliers refuse to sell gas to PG&E without assurance that they will be paid. The Analyst states that the gas suppliers have not indicated what forms of credit assurance would be acceptable in lieu of a security interest in PG&E's accounts receivable, but other forms of assurance, such as letters of credit and surety bonds, are not currently available to PG&E except for amounts secured by cash.

Several gas suppliers support PG&E's Petition. Cook Inlet Energy Supply L.L.C. (Cook Inlet) states that its sales of natural gas to PG&E are reliant on a security interest in PG&E's accounts receivable. Dynegy Marketing and Trade (Dynegy) maintains that extending PG&E's authority to pledge its assets is crucial to PG&E's continued success in securing adequate supplies of gas for its customers during a period of financial distress. BP Energy Company and BP Canada Energy Company (collectively, BP) state that given PG&E's financial distress, gas suppliers have little incentive to sell gas to PG&E absent PG&E's

accounts receivable security program. BP believes, therefore, that denying PG&E's Petition would place California's natural gas consumers at risk. BP contends that if gas suppliers do sell gas to PG&E in the absence of the accounts receivable security program, the credit risk to suppliers would be reflected in either higher-priced gas or costly security devices.<sup>5</sup>

The Office of Ratepayer Advocates (ORA) and The Utility Reform Network (TURN) also support PG&E's Petition. ORA and TURN find credible PG&E's assertion that gas suppliers are reluctant to sell gas to PG&E because of PG&E's bankruptcy. ORA and TURN also state that current gas prices are relatively low, and that the market forecast is for higher prices in the coming winter. ORA and TURN believe that granting PG&E's Petition will facilitate PG&E's ability to procure low-cost gas now for delivery next winter. They add that extending PG&E's authority to pledge its accounts receivable and core inventory should not impose any additional costs or risks on core customers.

## **Discussion**

We have no reason to doubt PG&E's assertions that gas suppliers will not sell gas to PG&E without assurance that they will be paid. Accordingly, we are persuaded by PG&E that it needs an extension of time beyond May 1, 2002, to pledge its gas accounts receivable and core inventory for the purpose of procuring core gas supplies. We are not persuaded, however, that PG&E should be granted an extension until May 1, 2004. Given the nature of PG&E's finances, we believe that it is in the public interest to periodically reconsider PG&E's need for authority to pledge its gas accounts receivable and core inventory.

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<sup>5</sup> BP states that if PG&E's Petition is not granted, than BP will not sell gas to PG&E without prepayment or letters of credit.

For the preceding reasons, we will modify D.01-06-074 to extend PG&E's authority to pledge its gas accounts receivable and core inventory for the sole purpose of procuring core gas supplies until the earlier of (i) May 1, 2003, (ii) 15 days after an upgrade of the credit rating of PG&E's senior unsecured long-term debt to BBB- by S&P or Baa3 by Moody's, (iii) the effective date of a Chapter 11 Plan for PG&E, or (iv) the dismissal or conversion of PG&E's Chapter 11 case. In all other respects, D.01-06-074 remains in full force and effect.

### **Procedural Matters**

Notice of PG&E's Petition appeared in the Commission's Daily Calendar on December 13, 2001. Pursuant to a ruling issued by assigned Administrative Law Judge (ALJ) Kenney on December 14, 2001, responses to PG&E's Petition were due on December 24, 2001. Dynegy filed a timely response.

Section 311(g)(1) requires the Commission's draft decision regarding PG&E's Petition to be (i) served on all parties, and (ii) subject to at least 30 days of public review and comment prior to a vote of the Commission. Section 311(g)(2) allows the 30-day period to be reduced or waived upon the stipulation of all parties. The Draft Decision of ALJ Kenney was mailed and e-mailed to the parties on January 22, 2002. There were no comments on the Draft Decision.

On February 20, 2002, ALJ Kenney issued a ruling that directed PG&E to amend its Petition to provide additional information regarding the need to extend PG&E's authority to pledge its gas accounts receivable and core inventory. PG&E filed its amendment on February 27, 2002. The ruling also directed parties to file responses to the amendment no later than March 4, 2002. BP, Cook Inlet, Dynegy, ORA, and TURN filed timely responses.

## **Findings of Fact**

1. D.01-01-062 granted PG&E authority under § 851 to pledge its accounts receivable and core inventory for the sole purpose of procuring core gas supplies. The authority terminated 90 days after the effective date of D.01-01-062, or, if earlier, 15 days after an upgrade of the credit rating of PG&E's senior unsecured long-term debt to BBB- by S&P or Baa3 by Moody's.

2. D.01-02-050 extended PG&E's authority to pledge its accounts receivable and core inventory until the earlier of (i) July 31, 2001, or (ii) 15 days after an upgrade of the credit rating of PG&E's senior unsecured long-term debt.

3. D.01-06-074 extended PG&E's authority to pledge its accounts receivable and core inventory until the earlier of (i) May 1, 2002, (ii) the effective date of a confirmed reorganization plan in PG&E's bankruptcy case, (iii) the closure or dismissal of PG&E's bankruptcy case, or (iv) 15 days after an upgrade of the credit rating of PG&E's senior unsecured long-term debt.

4. PG&E represents that it needs an extension of its authority to pledge its accounts receivable and core inventory in order to maintain its ability to procure adequate supplies of gas to meet the needs of its core customers.

5. PG&E represents that as long as it is in bankruptcy, many gas suppliers will not sell gas to PG&E without a security interest in PG&E's gas accounts receivable and core inventory.

6. The following gas suppliers represent that PG&E's ability to pledge its gas accounts receivable is essential to PG&E's continued ability to procure adequate supplies of gas for its core customers: BP, Cook Inlet, and Dynegy.

7. ORA and TURN support PG&E's Petition and believe that granting the Petition will not harm core customers.

### **Conclusions of Law**

1. It is in the public interest to extend beyond May 1, 2002, PG&E's authority under § 851 to pledge its accounts receivable and core inventory for the sole purpose of procuring gas supplies to meet the needs of its core customers.

2. Given the nature of PG&E's finances, it is in the public interest to periodically reconsider PG&E's need for authority to pledge its accounts receivable and core inventory.

3. PG&E's authority to pledge its accounts receivable and core inventory should be extended to the earlier of (i) May 1, 2003, (ii) 15 days after an upgrade of the credit rating of PG&E's senior unsecured long-term debt to BBB- by S&P or Baa3 by Moody's, (iii) the effective date of a Chapter 11 Plan for PG&E, or (iv) the dismissal or conversion of PG&E's Chapter 11 case.

4. The following order should be effective immediately to help ensure PG&E's uninterrupted ability to procure sufficient supplies of gas to meet the needs of its core customers.

### **O R D E R**

#### **IT IS ORDERED** that:

1. Pursuant to Pub. Util. Code § 851, Pacific Gas and Electric Company (PG&E) is authorized to pledge its gas customer accounts receivable and core gas inventory, subject to PG&E's Mortgage, for the sole purpose of procuring gas for PG&E's core customers, including flowing gas supplies and storage gas.

2. The authority granted to PG&E in Ordering Paragraph 1 shall terminate the earlier of (i) May 1, 2003, (ii) 15 days after an upgrade of the credit rating of PG&E's senior unsecured long-term debt to BBB- by Standard & Poor's or Baa3



by Moody's Investor Services, (iii) the effective date of a Chapter 11 Plan for PG&E, or (iv) the dismissal or conversion of PG&E's Chapter 11 case.

3. PG&E's petition to modify Decision (D.) 00-01-062, D.01-02-050, and D.01-06-074 filed on December 11, 2001, is granted and denied to the extent set forth in the previous Ordering Paragraphs. In all other respects, these decisions remain in full force and effect.

4. This proceeding is closed.

This order is effective today.

Dated March 6, 2002, at San Francisco, California.

LORETTA M. LYNCH  
President  
HENRY M. DUQUE  
RICHARD A. BILAS  
CARL W. WOOD  
GEOFFREY F. BROWN  
Commissioners

I will file a concurrence.

/s/ LORETTA M. LYNCH  
Commissioner

D.02-03-025

A.00-10-029

*President Lynch's partial concurring opinion to D.02-03-025:*

I support the majority opinion extending the authorization for PG&E to offer its natural gas accounts receivables as collateral against payment to its wholesale natural gas suppliers. While I support this decision as a means of assuring reliable, low-priced supplies for PG&E's core ratepayers, I regret that the decision, in setting a May 2003 date, does not automatically afford the Commission the opportunity to re-evaluate this collateral mechanism before May, 2003.

The natural gas market, and PG&E's own financial situation, have evolved considerably since the Commission first authorized PG&E to use its natural gas accounts receivables as collateral in January 2001. At that time, extraordinarily high prices and unprecedented volatility dominated the California natural gas market. PG&E's electricity-related financial uncertainty further fueled suppliers' anxiety that PG&E would pay them for the gas they delivered to PG&E.

In the weeks and months since, natural gas prices have returned to more historic levels, and PG&E's financial status has evolved from uncertain debtor to a debtor-in-possession under the relative stability of Federal Bankruptcy Court. The Commission has re-evaluated and re-authorized this unprecedented collateral mechanism two times in the last fourteen months, and each time I have appreciated the opportunity to examine the need in light of changing market and bankruptcy contexts.

A lot more can change between today and May 2003. Certainly, the Commission is dedicated to bringing PG&E out of bankruptcy as quickly as possible, in a way that fairly balances the interests of its ratepayers, creditors and shareholders. I hope and expect that those efforts will improve PG&E's creditworthiness standing in the coming months. Even six months from now, we will likely know much more about PG&E's standing in its bankruptcy proceeding. I would have preferred to have the option of re-evaluating this security mechanism in light of developing events, instead of locking it in for the next fourteen months. Nonetheless, I concur with my colleagues that the present environment warrants PG&E's continued ability to offer its gas accounts receivable as security to gas suppliers, and support the overall decision.

/s/ LORETTA M. LYNCH

**LORETTA M. LYNCH**

**President**

***San Francisco , California***

***March 6, 2002***